

## EXHIBIT 14

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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF OHIO  
3 EASTERN DIVISION

4 IN RE: NATIONAL : MDL No. 2804  
5 PRESCRIPTION OPIATE :  
6 LITIGATION : Case No. 17-md-2804  
7 APPLIES TO ALL CASES : Hon. Dan A. Polster  
8 :  
9 :

10 HIGHLY CONFIDENTIAL

11 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

12 JANUARY 4, 2019

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14 VIDEOTAPED DEPOSITION OF ANTHONY MOLLICA,  
15 taken pursuant to notice, was held at Marcus &  
16 Shapira, One Oxford Center, 35th Floor, Pittsburgh,  
17 Pennsylvania 15219, by and before Ann Medis,  
18 Registered Professional Reporter and Notary Public in  
19 and for the Commonwealth of Pennsylvania, on Friday,  
20 January 4, 2019, commencing at 8:06 a.m.

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1 requirements being held based on legal  
2 requirements, et cetera.

3 Q. Let's just, if we could, make a list of  
4 these policies. So the first that I heard was  
5 good decisions on dispensing.

6 A. We supported pharmacists' right to make  
7 professional judgments as to what was proper and  
8 improper in terms of dispensing, made sure the  
9 pharmacists knew that they had the right, final  
10 right of decision making when it came to  
11 dispensing.

12 We had our controlled substance procedures  
13 that we made sure was distributed. We had audit  
14 procedures that were done quarterly and documented  
15 in accordance with what our procedures and  
16 policies were at the time. We had practices in  
17 terms of document retention and what needed to be  
18 done in terms of proper ordering, training,  
19 training on -- we had manuals and references  
20 regarding not only the DEA, but Pharmacy Act and  
21 fraud, waste and abuse policies, CBTs, annual  
22 meetings with a lot of discussions of what the  
23 obligation of pharmacists were and helped in any  
24 way.

25 We've had DEA inspections which were never --

1 never got any feedback that we weren't doing  
2 anything other than what was required from us from  
3 a legal perspective.

4 Q. So I just want to make sure I've got an  
5 exhaustive list. One was good decisions on  
6 dispensing. Then you said you gave pharmacists or  
7 professionals the ability to make professional  
8 judgments on dispensing controlled substances?

9 A. Yeah, supported by the Pharmacy Act,  
10 yes.

11 Q. And then the second one was controlled  
12 substance procedures?

13 A. Again, Giant Eagle had a controlled  
14 substance policy that's part of the control box,  
15 and the company made sure that we communicated  
16 what those procedures are to the pharmacy.

17 Q. And what were those policies?

18 A. I can't recite them. It was part of the  
19 control box.

20 Q. When you say control box, what do you  
21 mean by that?

22 A. There was a physical box in every  
23 pharmacy that was a single place to look for  
24 procedures, documents, records, that type of  
25 thing. We called it the control box.

1 Q. It was a control box for Schedule II  
2 controlled substances?

3 A. Yes. It had other information in there.  
4 It was all controls, but Schedule II was part of  
5 that.

6 Q. Do you know if the control box -- if  
7 Schedule III controlled substances would be  
8 contained in the control box?

9 A. Well, just general --

10 MR. KOBRIN: Object to form.

11 THE WITNESS: Not to my knowledge. I  
12 don't think there's specific -- like DEA manuals  
13 aren't specific just to that. They're all  
14 inclusive of the thing.

15 BY MR. HUDSON:

16 Q. So all controlled substances would be in  
17 the control box?

18 MR. KOBRIN: Object to form.

19 THE WITNESS: Information regarding,  
20 yeah.

21 BY MR. HUDSON:

22 Q. Information regarding controlled  
23 substances. So it's not like a physical box that  
24 you put certain controlled substances into?

25 A. Oh, no, no. I'm talking about

1 documentation here. No. Controlled substances,  
2 Schedule IIs, were kept in lock and key, in safes.  
3 III through Vs would be distributed in the  
4 pharmacy in a proper fashion in accordance with  
5 the law.

6 Q. The control box then would be a box that  
7 would have policies or procedures in it?

8 A. Policies, procedures, the records in  
9 terms of ordering and dispensing, all the  
10 reference materials, fraud, waste and abuse, the  
11 technician certifications, those types of things.

12 Q. And would there be a control box that  
13 would be contained at each Giant Eagle retail  
14 pharmacy?

15 A. Yes.

16 Q. And would the control box contain the  
17 same basic set of -- would you call them policies  
18 or procedures or how would you describe them?

19 A. Both.

20 Q. Would there be things beyond just  
21 policies and procedures in the control box?

22 A. I don't recall exactly what was in each  
23 tab of the box, but things like the order records.  
24 If you had CIIIs, those order records would be  
25 maintained, or dispensing logs associated with it.

1           At one time I want to say that there was  
2 records of the actual audits we would do monthly,  
3 but that moved over to an electronic format, and I  
4 can't recall if that was part of the box after  
5 that.

6           Q.     The third thing I had was audit  
7 procedures. So if you could, just describe for me  
8 what the audit procedures were.

9           A.     First of all, the state and local  
10 authorities would do audits at will. In terms of  
11 ours, we did quarterly audits that were all  
12 inclusive of operational practice. That included  
13 making sure that the box was in order and the  
14 things that needed to be there were in there.

15           Every month we would audit every controlled  
16 substance. Annually we would do a hand count of  
17 every controlled substance in the pharmacy. We  
18 would do routine audits, virtual inventory logs,  
19 lots of stuff like that.

20           Q.     So for those audits of controlled  
21 substances, would you do a physical count of each  
22 prescription --

23           MR. KOBRIN: Object to form.

24 BY MR. HUDSON:

25           Q.     -- or each bottle? Describe for me what

1 that procedure looked like.

2 MR. KOBRIN: Object to form.

3 THE WITNESS: Which procedure?

4 BY MR. HUDSON:

5 Q. The audit procedure.

6 A. Which one?

7 Q. For reviewing inventory.

8 A. Every month there was a requirement to  
9 hand count every CII narcotic, record that against  
10 what was dispensed.

11 Q. Was the process the same for Schedule II  
12 controlled substances versus Schedule III  
13 controlled substances?

14 A. Schedule IIIs through Vs, there was -- I  
15 believe the state requires it every two years. We  
16 did it annually.

17 Q. So was the monthly audit procedure  
18 focused exclusively on the Schedule II controlled  
19 substances?

20 A. That particular procedure was about  
21 control IIIs, yes.

22 Q. So there was not a monthly audit  
23 procedure that applied to Schedule III controlled  
24 substances?

25 MR. KOBRIN: Object to form.

1               THE WITNESS: First of all, there was a  
2 daily audit of all controls. We had a virtual  
3 log. Every pharmacist got the chance to see the  
4 virtual inventory dispensings and what was being  
5 ordered on a nightly basis.

6               Records were printed every night in terms of  
7 what was dispensed on the controlled substance.  
8 I'm speaking specifically to a required audit  
9 which was a monthly procedure, not day in/day out  
10 operating procedures.

11               There was daily monitoring of who could touch  
12 the safe, who could count. If anything, I think  
13 we always erred on the side do more rather than  
14 less when it came to procedures with controlled  
15 substances.

16 BY MR. HUDSON:

17 Q. Were Schedule IIIs though in the vault?

18 A. I don't recall Schedule IIIs being in  
19 the vault. Actually, Vicodin or hydrocodone  
20 products, at one time I believe we made -- we  
21 treated them with the same control II substance  
22 policy. I don't recall the dates around that, but  
23 I do recall moving the hydrocodone combination  
24 products into the safe or at least a portion of  
25 those. I don't recall the specifics of that.

1 after the settlement to address the accusations by  
2 Ohio that the internal controls were inadequate?

3 MR. KOBRIN: Object to form. It  
4 misrepresents the evidence.

5 THE WITNESS: I know that as a result of  
6 any incident, and especially ones like this, that  
7 Giant Eagle took many actions to continually try  
8 to improve and build new mousetraps when it comes  
9 to internal controls and how we measure them.

10 BY MR. HUDSON:

11 Q. Anything more specific you can say about  
12 specific actions or steps Giant Eagle took after  
13 the settlement with the Ohio Board of Pharmacy in  
14 2011?

15 A. Sure. I mean, I can't say that they're  
16 specific to this particular situation, but from  
17 2011 moving forward, there were things like moving  
18 to more virtual inventory and moving away from  
19 paper to electronics. There was a company called  
20 Supply Logics that Giant Eagle engaged to bring  
21 more visibility to this. You could see if an  
22 associate was manipulating an internal control or  
23 changing an inventory figure to read more  
24 favorably on a report. Heightened awareness in  
25 terms of physical audits that we would do, more

1 training.

2 We always tried to use situations where bad  
3 players is an opportunity to reevaluate and come  
4 up with new procedures to stay ahead of it.

5 Q. In your mind, did the procedures at  
6 Giant Eagle become better at detecting diversion  
7 over time?

8 A. I would like to think they became  
9 better. That was always the goal, was to make it  
10 better and better. You don't know what you don't  
11 know. But when you see a weakness in an area or  
12 if someone can exploit it, you work to try to stop  
13 someone from being able to exploit it.

14 (HBC-Mollica Exhibit 8 was marked.)

15 BY MR. HUDSON:

16 Q. Let me hand you what I marked as  
17 Exhibit 8. For the record, Exhibit 8, the  
18 internal number is P-HBC-1331.

19 Mr. Mollica, these emails were obviously  
20 written after you left the company, so you haven't  
21 probably seen them before would be my guess.

22 A. Years after I left the company it looks  
23 like.

24 Q. And my focus is on the middle email from  
25 Mr. Chunderlik to others, and the topic is Control

1           A. I don't know what this document is.  
2       What are these questions? This SOM and  
3       anti-diversion program piece, I just don't know  
4       what this is.

5           Q. That's what I'm getting at, is whether  
6       you're able to say as you sit here today whether  
7       or not Giant Eagle had written policies that were  
8       specifically aimed at meeting these requirements  
9       of 1301.74(b).

10           MR. KOBRIN: Object to form.

11           THE WITNESS: When you asked me -- to me  
12       you're asking about a difference between a policy  
13       that's of a distributor versus the pharmacy, and  
14       I'm saying that it's the same company distributing  
15       to itself. So by definition, any and all of our  
16       suspicious -- whether diversion related measures  
17       that we had in place are going to be part of the  
18       suspicious monitoring system, to my opinion.

19           BY MR. HUDSON:

20           Q. Is there anything as you sit here today,  
21       any manual or anything in writing?

22           A. Everything that we have, our dispensing  
23       procedures, our documentation tracking, our  
24       requirements in training that we do with  
25       technicians, all our procedures are going to be

1 part of that.

2 Q. Those are all geared towards identifying  
3 unusually large orders of controlled substances?

4 A. That's not what it's asking on here.  
5 It's asking about if there's suspicious  
6 order monitoring.

7 Q. What is a suspicious order?

8 MR. KOBRIN: Object to form.

9 THE WITNESS: I don't have a definition  
10 of suspicious order. If there are orders that  
11 require, you know, a go look-see or further  
12 information, we were going to go look and see.

13 BY MR. HUDSON:

14 Q. Well, what does the regulation say about  
15 a suspicious order?

16 MR. KOBRIN: Object to form. If you  
17 want to show him the regulation, but I don't think  
18 he should be expected to know that or should  
19 testify to it. I'm going to say don't answer  
20 that.

21 MR. HUDSON: Are you instructing him not  
22 to answer?

23 MR. KOBRIN: I think you should clarify  
24 or tell him what you're doing. I mean, you're  
25 asking him to tell you about legal regulations

1           Q. And when an employee violates Giant  
2 Eagle's rules like this, are they disciplined or  
3 fired?

4           A. They're terminated immediately and where  
5 it's appropriate, we report to the state Board.

6           Q. In any organization that you've ever  
7 been in, do they have a 100 percent record of  
8 employees not stealing?

9           A. Not the ones I've ever worked at, no.

10          Q. In your experience, are internal  
11 controls sometimes overridden by dishonest  
12 employees?

13          A. I've had situations where employees have  
14 overridden internal controls, yes, to steal from  
15 an organization, whether it's money, drugs, other  
16 things, supplies.

17          Q. So despite the company's best efforts to  
18 put in controls, sometimes people commit criminal  
19 acts?

20          A. You're always trying to build a better  
21 mousetrap because of those things.

22          Q. Now, other than this thousand dollar  
23 fine paid in connection with this incident, are  
24 you aware of the Ohio State Board of Pharmacy  
25 doing anything else with respect to this incident

1 other than what's revealed in this document?

2 A. No, not to my -- not to my recollection.

3 I honestly can't remember if they did follow-up

4 inspections or things like that. They may have.

5 I just don't recall.

6 Q. And this was specifically directed at

7 one store, not the entire chain or the

8 corporation; is that correct?

9 A. That's correct.

10 Q. You said something about the DEA and the

11 Ohio State Board coming into these pharmacies for

12 spot audits, things of that nature.

13 A. Correct.

14 Q. Did the Ohio State Board of Pharmacy as

15 a result of this incident do anything with respect

16 to this store's ability to continue to fill

17 prescriptions?

18 A. No. Are you referring to any kind of

19 sanction?

20 Q. Yes.

21 A. No.

22 Q. You talked a lot about the integrated

23 system of controls that Giant Eagle had, and I

24 don't want repeat all of that. But I just want to

25 make sure for completeness of the record.

1           Did Giant Eagle at all times hire licensed  
2 and trained pharmacists?

3           A.     Yes.

4           Q.     Did they train those pharmacists with  
5 respect to diversion?

6           A.     Pharmacists are trained, are aware of  
7 the laws regarding diversion as part of licensure.  
8 But then, yes, we had training for pharmacists and  
9 reference material type of tools within the  
10 pharmacy for them to reacquaint themselves with  
11 those things at any time.

12          Q.     If a pharmacist doesn't follow Giant  
13 Eagle policies and procedures or the law, what  
14 happens?

15          A.     If a pharmacist doesn't follow the law,  
16 they're terminated, many times reported to the  
17 Board if we believe that whatever the termination  
18 was a risk to public health.

19          Q.     And you talked earlier today about the  
20 professional discretion and judgment that  
21 pharmacists use.

22           Is that a line of control in your mind in  
23 terms of avoiding diversion? Is that the first  
24 line of defense, that a pharmacist, licensed  
25 pharmacist must review the prescription before

1 it's filled?

2 A. Yes. That's why pharmacies require  
3 licensed pharmacists. That's one of the reasons.

4 Q. And pharmacies are assisted by  
5 technicians in the pharmacy; is that right?

6 A. Yes.

7 Q. Are they trained and supervised by the  
8 pharmacists themselves?

9 A. They're trained both by the pharmacist,  
10 but there's a formal technician training program  
11 as well, a Giant Eagle certification program.

12 Q. And the policies, some of the policies  
13 that you referenced earlier today, do they include  
14 the DEA pharmacist manual?

15 A. Yes.

16 Q. Are those in all of the pharmacies?

17 A. Yes.

18 Q. Do they include the Giant Eagle  
19 Controlled Substance Dispensing Guidelines?

20 A. Yes.

21 Q. Are the pharmacists trained on those  
22 dispensing guidelines?

23 A. Yes.

24 Q. Is that training monitored in some way?  
25 In other words, can a pharmacist just skip that

1 training in some way?

2 A. I can't imagine you could pass the state  
3 Board exam if you skip it.

4 Q. Does Giant Eagle make sure that the  
5 pharmacists when they're hired, they actually  
6 review these guidelines and are trained on them?

7 A. Yes. There's also computer-based  
8 monitoring that had attestations.

9 Q. In these so-called PMPs, like the OARRS  
10 system, are those in all of the Giant Eagle  
11 stores?

12 A. To my knowledge, yes.

13 Q. And are pharmacists --

14 A. I can't recall what the State of West  
15 Virginia was with that. I can't remember if they  
16 had electronic or some other system, but whatever  
17 West Virginia had, we were complying with that  
18 one. I don't want to say it was exactly like  
19 OARRS. Each state has a right to be a little  
20 different there.

21 Q. Are those a resource tool for the  
22 pharmacists to determine the legitimacy of  
23 prescriptions?

24 A. Yes.

25 Q. You were asked a lot of questions today

1           A. It was a small percentage. Like I say,  
2 I can't recall the exact NDCs that were in the  
3 warehouse, but even in our overall dispensing,  
4 it's a small number, small percentage.

5           Q. This Exhibit 13, number (B) (4) talks  
6 about location of the premises. Were all these  
7 Giant Eagle pharmacies inside Giant Eagle grocery  
8 stores?

9           A. Yes, with the exception of the examples  
10 that I spoke to the gentleman about earlier.  
11 There was two independently-owned grocery stores  
12 in the Cleveland market that we had Giant Eagle  
13 pharmacies in.

14           Q. Those were transitioned then to Giant  
15 Eagle stores?

16           A. They were just -- no. They never  
17 transitioned to Giant Eagle stores. We just took  
18 the pharmacies out.

19           Q. But being inside of a grocery store, is  
20 that a level of control that you consider as part  
21 of the security analysis?

22           A. Not only were they delivered to a store,  
23 but they were in cases where the pharmacy -- if  
24 there was a situation where the pharmacy wasn't  
25 open, they had to be delivered to a locked cage

1       within the store.

2           Q.     Factor (B) (6) six talks about types of  
3        vaults and safes and other secure enclosures.

4           Did the pharmacies at least to your knowledge  
5        keep any controlled substances in locked secure  
6        locations?

7           A.     Every drug in the pharmacy is in a  
8        locked location in the pharmacy, and that's the  
9        reason why the state Boards have you send in  
10      diagrams of physical barriers so every drug is  
11      protected that way. It doesn't matter if it's  
12      controlled or not. Narcotics inside of that  
13      locked pharmacy are in a locked safe or locked  
14      cabinet.

15          Q.     Did the Ohio State Board of Pharmacy  
16      audit every store at least once per year?

17          A.     I don't know what their frequency was.  
18      That sounds reasonable. If you would ask me how  
19      often I think, I would say once a year.

20          Q.     Did anybody from the Ohio State Board of  
21      Pharmacy ever come to Giant Eagle to your  
22      knowledge and say, hey, you're not meeting those  
23      requirements?

24          A.     No. In fact, we actually had a member  
25      of the state Board who worked for us.

1 THE WITNESS: I don't know.

2 MR. KOBRIN: He talked about what was  
3 done and the policies behind it and the reasons  
4 behind it.

5 BY MR. HUDSON:

6 Q. And I just want to make sure the record  
7 is clear. This is my only chance to talk to you.

8 There's no reason though why Giant Eagle  
9 retail pharmacies nationwide couldn't have kept  
10 some sort of record of suspicious or questionable  
11 prescriptions that ended up not being filled, is  
12 there?

13 MR. KOBRIN: Are you asking if they  
14 should have kept a record of the actual  
15 prescriptions themselves?

16 BY MR. HUDSON:

17 Q. Do you understand the question?

18 A. You're asking me is there anything that  
19 prohibited us from maintaining records of  
20 prescriptions we did not fill?

21 Q. Right. In other words, if somebody came  
22 in and handed you a prescription and you as a  
23 licensed pharmacist applying your medical judgment  
24 said, you know what, this doesn't seem right, I'm  
25 not going to fill this prescription, is there any

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1 reason why you can't write that down, take notes  
2 on that, put it into a computer and then as an  
3 organization log that to try to identify  
4 suspicious or questionable opioid orders that are  
5 being rejected?

6 MR. KOBRIN: Object to form.

7 THE WITNESS: For what reason? There's  
8 no requirement to do that, so it would have never  
9 come up.

10 MR. HUDSON: I don't have any further  
11 questions.

12 RE-EXAMINATION

13 BY MR. BARNES:

14 Q. I just have one follow-up question. The  
15 formula type program that went into effect in  
16 2013, in your view, was that an additional system  
17 of controls on top of controls that were already  
18 in existence?

19 A. Yeah. We're always checking in orders  
20 and maintaining inventory requirements. Like I  
21 said, systems evolve in time, and that was an  
22 example of one that evolved.

23 MR. BARNES: Thank you.

24 THE WITNESS: Thank you.

25 THE VIDEOGRAPHER: 2:01 p.m. we are off